

ORDINANCE NO. 16-005

ORDINANCE OF THE CITY COUNCIL OF THE CITY OF EMERYVILLE AMENDING ARTICLE 6 OF CHAPTER 4 OF TITLE 9 OF THE EMERYVILLE MUNICIPAL CODE REGARDING WATER EFFICIENT AND BAY FRIENDLY LANDSCAPING; CEQA DETERMINATION: EXEMPT PURSUANT TO CEQA GUIDELINES 15307 AND 15061(B)(3)

WHEREAS, on January 17, 2012, the City Council adopted a Water Efficient Landscape Ordinance (WELO) codified in Article 6 of Chapter 4 of Title 9 of the Emeryville Municipal Code as required by the California Water Conservation in Landscaping Act of 2006 (AB 1881); and

WHEREAS, on January 17, 2014, Governor Brown declared a state of emergency as a result of the drought conditions in the State of California; and

WHEREAS, on April 1, 2015, Governor Brown issued Executive Order B-29-15, directing the Department of Water Resources to update the State's Model Water Efficient Landscape Ordinance to increase water efficiency standards for new and existing landscapes; and

WHEREAS, the California Water Commission approved the revised model WELO on July 15, 2015; and

WHEREAS, beginning on December 1, 2015, pursuant to state law, the City began enforcing the revised state model WELO and continued to enforce its own WELO to the extent that it prescribed more stringent water efficiency standards; and

WHEREAS, the City desires to update its WELO to make it consistent with current state law; and

WHEREAS, on June 23, 2016, the Emeryville Planning Commission held a duly and properly noticed public hearing on the proposed ordinance and unanimously recommended its adoption by the City Council; and

WHEREAS, on September 6, 2016, the Emeryville City Council held a duly and properly noticed public hearing on the proposed ordinance; and

WHEREAS, the City Council has reviewed and considered the staff report and attachments thereto, all public comments, and the proposed amendments to Title 9 of the Emeryville Municipal Code, as set forth below, and the applicable provisions of the Emeryville Municipal Code;



NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF EMERYVILLE DOES HEREBY ORDAIN AS FOLLOWS:

SECTION ONE. PURPOSE AND INTENT.

The purpose and intent of this ordinance is to amend the Planning Regulations in Title 9 of the Emeryville Municipal Code relating to water efficient landscaping, to increase water efficiency standards for landscapes, and to make the regulations consistent with State law.

SECTION TWO. REQUIRED FINDINGS FOR ADOPTING ORDINANCE.

The City Council makes the following findings, pursuant to Section 9-7.1305 of the Emeryville Municipal Code:

(a) The proposed amendment is consistent with the General Plan.

The proposed amendment helps to implement General Plan goal CSN-G-3, "Water quality and conservation" because it will improve water conservation and reduce per capita water consumption by requiring water efficient landscaping in new landscapes of 500 square feet or more, encouraging graywater and rainwater capture by allowing a wider range of plants where graywater and rainwater capture are used, reduce landscape water use by reducing allowed evapotranspiration, and require landscape submeters for non-residential landscapes greater than 1,000 square feet; and it will increase use of recycled water by allowing higher water use plants in areas irrigated by recycled water.

(b) The proposed amendment is necessary for public health, safety and welfare or will be of benefit to the public.

The proposed amendment will benefit the public by protecting a natural resource through increasing water conservation using the methods listed above.

(c) The proposed amendment has been reviewed in compliance with the requirements of the California Environmental Quality Act.

The proposed amendment is exempt from the requirements of the California Environmental Quality Act (CEQA) under Section 15307 of the State CEQA Guidelines regarding actions by a regulatory agency for protection of natural resources and under the "general rule" at Section 15061(b)(3) because it can be seen with certainty that there is no possibility that the ordinance may have a significant effect on the environment;

SECTION THREE. AMENDING ARTICLE 6 OF CHAPTER 4 OF TITLE 9 OF THE EMERYVILLE MUNICIPAL CODE

Sections 9-4.602, 9-4.604, and 9-4.605 (c) and (j) of Article 6 of Chapter 4 of Title 9 of the Emeryville Municipal Code are hereby amended as follows, with deletions shown in strikeout type and additions shown in **bold and underlined** type.

9-4.602 Water Efficient and Bay Friendly Landscaping.

(a) **Purpose.** This section establishes water efficient landscaping requirements for new and rehabilitated landscapes. The purpose of the requirements is to foster efficient water use and prevent water waste while ensuring high quality landscapes.

(b) **Applicability.** This section shall apply to ~~new construction and rehabilitated~~ landscapes for public agency projects and private development projects with a landscape area equal to or greater than 1,000 **500** square feet, **as specified below**.

(c) **Prescriptive Requirements for Smaller Landscapes.** ~~New or rehabilitated landscaping between 1,000 square feet and 2,499 square feet~~ **equal to or greater than 500 square feet and less than 2,500 square feet** of landscaped area **requiring Design Review** shall comply with landscape requirements for smaller landscapes for planting, ~~soil~~, mulch, grading, and irrigation, as specified by the Director. **Any project with a landscape area less than 2,500 square feet that meets the landscape water requirement entirely with graywater, rainwater captured on site, or both, is subject only to the sections of the smaller landscapes requirement on "amendments and mulch" and "irrigation".**

(d) **Performance Requirements for Larger Landscapes.** New and rehabilitated landscapes with a landscape area equal to or greater than 2,500 square feet shall comply with landscape requirements for larger landscapes for planting, mulch, ~~soil~~, grading, and irrigation, as specified by the Director.

(e) **Water Waste, Stormwater Treatment and Recycled Water.** All projects subject to this section shall comply with all other requirements of the Emeryville Municipal Code, including Chapter 36 of Title 5 prohibiting irrigation water waste, Chapter 13 of Title 6 regarding stormwater treatment, and Section 9-4.603 of this article regarding recycled water.

(f) **Exceptions.** This section shall not apply to the following:

- (1) Registered historical sites.
- (2) Ecological restoration projects that do not require a permanent irrigation system.

~~(3) Plant collections, as part of botanical gardens and arboretums open to the public.~~

~~(4) Cemeteries.~~

(53) Projects with a landscape area less than 4,000 500 square feet.

9-4.604 Water Reclaimed On Site.

(a) **Purpose.** The purpose of this section is to set forth standards for systems that reuse water on site. Such systems help to conserve valuable water resources and are encouraged; provided that adequate safeguards are included to protect health.

(b) **Rainwater Capture Systems.** Systems that capture and store precipitation from roof areas and other above-ground impervious surfaces for landscape irrigation and/or indoor water use must comply with all applicable codes and regulations. Systems using rain barrels of up to 100 gallons and no pumps do not require a permit. Systems using cisterns of over 100 gallons and/or pumps require plumbing and/or electrical permits pursuant to the Emeryville Plumbing Code at Chapter 3 of Title 8 and/or the Emeryville Electrical Code at Chapter 4 of Title 8. Because the Emeryville Plumbing Code has no approved standards for rainwater capture systems, an alternative methods and materials request must accompany the permit application. ~~Development bonuses may be available for such rainwater capture systems pursuant to Section 9-4.204.~~ Landscape projects that are less than 2,500 square feet in area, and meet the estimated total water use entirely with graywater, rainwater capture, or both, are subject only to the prescriptive irrigation portion and the amendments and mulch portion of the requirements referenced in Section 9-4.602 Water Efficient and Bay Friendly Landscaping.

(c) **Graywater Systems.** Systems that reuse domestic wastewater from plumbing fixtures such as showers, dishwashers, and clothes washers for toilet flushing and irrigation must comply with the requirements for graywater systems of the Emeryville Plumbing Code in Chapter 3 of Title 8. ~~Development bonuses may be available for such rainwater capture systems pursuant to Section 9-4.204.~~ Landscape projects that are less than 2,500 square feet in area, and meet the estimated total water use entirely with graywater, rainwater capture, or both, are subject only to the prescriptive irrigation portion and the amendments and mulch portion of the requirements referenced in Section 9-4.602 Water Efficient and Bay Friendly Landscaping.

(d) **Blackwater.** Wastewater containing food, animal, or human waste, including but not limited to that from toilets and garbage disposals, shall not be reused on site but shall be discharged directly into the sanitary sewer system.

9-4.605 Definitions.

(c) "Graywater" means untreated waste water which has not come into contact with toilet, food, or chemical waste. Graywater includes used water from bathtubs, showers, bathroom sinks, clothes washing machines and laundry tubs. It does not include waste water from kitchen sinks, photo lab sinks, dishwashers or laundry water from soiled diapers.

(j) "Rehabilitated landscape" means any re-landscaping project in which the modified area was previously planted and ~~more than fifty percent (50%) of the existing landscape material is replaced or modified within a twelve (12) month period in more than fifty percent (50%) of the planting area~~ the modified landscape area is equal to or greater than 2,500 square feet.

SECTION FOUR.CEQA DETERMINATION.

The City Council hereby finds that the proposed amendment is exempt from the requirements of the California Environmental Quality Act (CEQA) under Section 15307 of the State CEQA Guidelines regarding actions by a regulatory agency for protection of natural resources, and under the "general rule" at Section 15061(b)(3) because it can be seen with certainty that there is no possibility that the ordinance may have a significant effect on the environment;

SECTION FIVE. SEVERABILITY.

The City Council hereby declares that every section, paragraph, clause and phrase of this Ordinance is severable. If, for any reason, any section, paragraph, clause or phrase is held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity or constitutionality of the remaining sections, paragraphs, clauses or phrases.

SECTION SIX. CODIFICATION.

Section Three of this Ordinance shall be codified in the Emeryville Municipal Code. Sections One, Two, Four, Five, Six, and Seven shall not be codified.

SECTION SEVEN. EFFECTIVE DATE AND POSTING.

This Ordinance shall take effect thirty (30) days following its final passage. The City Clerk is directed to cause copies of this Ordinance to be posted or published as required by Government Code Section 33693.

This Ordinance was introduced and first read by the City Council of the City of Emeryville at a regular meeting held on Tuesday, September 6, 2016, and passed and adopted by the City Council at a regular meeting held on Tuesday, September 20, 2016 by the following vote:

AYES: (5) Mayor Martinez, Vice Mayor Donahue and Council Members Asher,
Atkin and Davis
NAYES: (0)
ABSTAIN: (0)
ABSENT: (0)

Dianne Martinez
MAYOR

ATTEST:

APPROVED AS TO FORM:

Deputy City Clerk
CITY CLERK

Michael Quinn
CITY ATTORNEY